

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
HOME RULE ADVISORY GROUP**

**MINUTES
April 23, 2014**

CHAIR

Dr. Joseph Lyou, Governing Board member

MEMBERS

Present: The following members participated from SCAQMD Headquarters: Dr. Elaine Chang; Curtis Coleman; Jayne Joy; Bill LaMarr; Joy Langford; Art Montez; Bill Quinn; Terry Roberts; David Rothbart; Lee Wallace; and Mike Wang. The following members participated by conference call: Dan Weller on behalf of Chris Gallenstein (CARB) and Rongsheng Luo (SCAG).

Absent: Elizabeth Adams, Mike Carroll, Enrique Chiock, and Larry Rubio

AQMD STAFF

Marc Carrel, Amir Dejbakhsh, Bill Wong, and Marilyn Traynor

OTHER ATTENDEES

Mark Abramowitz (Board Consultant to Dr. Lyou); Earl Elrod (Board Consultant to Mayor Yates); Susan Stark (Tesoro); Vlad Kogan (OCSA); Tom Gross (SCE); Dan McGivney (So Cal Gas & SDG&E); and Barbara McBride (Calpine).

WELCOME/INTRODUCTIONS

The meeting was called to order at 10:00 a.m. by Dr. Joseph Lyou, Chairman. Other participants at the meeting were: Dr. Elaine Chang (SCAQMD); Bill Wong (SCAQMD); Curtis Coleman (Southern California Air Quality Alliance); Jayne Joy (Eastern Municipal Water District); Bill LaMarr (California Small Business Alliance); Joy Langford (Vasari Energy Capital); Art Montez (AMA International); Bill Quinn (CCEEB); Terry Roberts (American Lung Association of California); David Rothbart (Los Angeles County Sanitation Districts); Lee Wallace (So Cal Gas & SDG&E); and Mike Wang (WSPA). The following individuals participated by conference call: Dan Weller on behalf of Chris Gallenstein (CARB) and Rongsheng Luo (SCAG).

APPROVAL OF MINUTES

On motion of Bill LaMarr and seconded by David Rothbart, the minutes of the March 18, 2014, meeting were unanimously approved without objection.

FEDERAL SURFACE TRANSPORTATION LAW (MAP-21) REAUTHORIZATION BILL

Marc Carrel gave a presentation on proposed legislative amendment language and proposals to address air quality issues for upcoming legislation to reauthorize the federal surface transportation law (MAP-21), which will be expiring in Sept. 2014 (See Attachments 1 and 2). Mr. Carrel reported that the key goals are to improve mobility, accommodate economic growth, and reduce environmental impacts of freight movement through clean technologies and efficiency. The purpose of the grants/incentives is to encourage development and deployment of low and zero emission freight transport technologies and the supporting infrastructure and to develop advanced

technology policies for federal fleets. Mr. Carrel discussed the eight proposals for federal transportation legislation which were approved by the Legislative Committee at the April 11, 2014 meeting. He explained that the first five proposals focus on the movement of freight; proposals six and seven focus on clean passenger rail (in anticipation of a possible rail provision in MAP-21); and the eighth proposal is related to the Clean Air Act.

Discussion

With regard to slide No. 5 (Attachment 2), Dr. Lyou suggested that staff revise the bar chart to show which agency has authority over the different sources. Mr. Coleman agreed that showing the jurisdiction responsible for the reduction would be helpful. Another suggestion was to group by category (e.g., mobile, stationary, or area sources). Mr. Wang thought that an improvement would be to show the amount of tons of emissions.

With regard to Proposal No. 5, Mr. Montez commented that the EPA should not be requiring other agencies and organizations to comply with fleet rules and standards that EPA does not follow. He also stressed the importance of legislation that would provide funding for affordable alternative fuel vehicles and infrastructure in the environmental justice communities.

With regard to Proposal No. 8, Mr. Wallace asked if EPA's and CARB's definition of "all feasible measures" is the same. Dr. Chang responded that in context of the SIP they are treated as the same, although EPA's measures are typically less stringent. Mr. LaMarr expressed concern with opening the Clean Air Act and asked if anyone at SCAQMD had discussed this with EPA Administrator Gina McCarthy (there was no response to this question). Dr. Lyou agreed that, although the proposed language is good, there are certain risks involved with opening the Clean Air Act.

Mr. Quinn asked if the SCAQMD's consultants have expressed their opinion on whether any of this language will pass. Mr. Carrel responded that the consultants feel that it is unlikely at this time but possibly in the future. He explained that the goal is to have a proposal reflecting SCAQMD's position on what changes are needed so, when the time is right, a proposal will be ready.

LEGISLATIVE UPDATE

Marc Carrel provided a report on items that were discussed at the Legislative Committee meeting on April 11, 2014.

Federal

The consultants mentioned that while Congress was on spring recess, Senator Boxer, Chair of the Senate Environment and Public Works Committee, along with several other Senators, announced that their goal was to do a simple long-term extension of the MAP-21 reauthorization bill with rail provisions possibly added, but not many more changes. Further, the consultants reported that Senate committee staff was working on the bill, but that it would not be taken up until the Water Resource Development Act (WRDA) was completed. The consultants also mentioned working with Senator Feinstein's office to continue a zero-emission grant program in the FY 2015 Energy and Water Appropriations Bill from which SCAQMD received an award in 2012. Mr. Carrel explained that the Washington consultants also reported on a compromise at the recent International Maritime Organization (IMO) meeting which preserves the rule requiring ships built as of 2016 to meet more stringent NOx emission requirements when sailing in the North American Emission Control Area (ECA) (extending 200 miles from the coast of the U.S. and Canada). Mr. Carrel also stated that the consultants reported that Representative Ken Calvert, who chairs the subcommittee

overseeing funding for the Diesel Emissions Reduction Act (DERA), has stated he rejects the program being eliminated in the President’s Budget proposal.

State

The consultants reported that the state legislature is currently on spring break recess, and committee hearings will resume when they return. Other bills that were discussed by the consultants were fracking and/or well stimulation bills [AB 2420 (Nazarian), SB 1132 (Mitchell), and SB 1281 (Pavley)]; HOV and alternate fuel vehicle bills; AB 1102 (Allen) dealing with fire pits; SB 1125 (Pavley); SB 1121 (De León); energy bills related to financing for residential and commercial property owners for renewable energy or energy efficiency; AB 1763 (Perea); and AB 1330 (Pérez). The consultants reported that the Democratic Caucus lost its supermajority as the result of the suspension of Senators Rod Wright, Ron Calderon, and Leland Yee. The Legislative Committee discussed and approved staff’s recommendations on the following bills:

Bill	Action
AB 2013 (Muratsuchi) Vehicles: High-Occupancy Vehicle Lanes	Support
AB 2242 (Perea) Air Quality Improvement Program	Support with Amendments
SB 1204 (Lara and Pavley) California Clean Truck, Bus, and Off-Road Vehicle and Equipment Technology Program	Support
SB 1275 (De Leon) Vehicle Retirement and Replacement: Charge Ahead California Initiative	Support and Work with the Author
Proposed Federal Surface Transportation Law (MAP 21) Reauthorization Language	Approved Proposed Language with Amendments

Discussion on State Issues

Mr. Montez asked if there is any legislation requiring state and local governments to reduce petroleum consumption of their vehicle fleets. Mr. Carrel noted that the state has a requirement already to purchase cleaner vehicles for its fleet, and mentioned there was a federal bill to require the U.S. Postal Service to improve the fuel efficiency of its fleet. (Note: Subsequent to the meeting, Mr. Carrel provided the following response: Representative Jared Huffman (D-CA) introduced H.R. 3963 (Fleet Act of 2014) on January 29, 2014. H.R. 3963 requires the U.S. Postal Service fleet to reduce its petroleum consumption by 2% each year over the next ten years. No action has been taken on H.R. 3963 to date.) Mr. Montez asked if staff has data on the number of vehicles in state and local government fleets. Mr. Carrel responded that the Department of General Services (DGS) is responsible for information on the state fleets and may have the number of

vehicles; however, they would not have that information for local governments. Mr. Montez suggested that the number could be derived from checking with DMV on how many license plates were issued to local governments for their fleets. Dr. Chang added that SCAQMD has data on the total number of heavy-duty government vehicles, and this information was included in paragraph one on page four of the March 18, 2014, HRAG meeting minutes.

Mr. Quinn emphasized that CCEEB is still interested in being included in the discussions with the air districts, stakeholders, and the Speaker's office on the AB 1330 bill language.

UPDATE REGARDING LITIGATION ITEMS AND RELATED EPA ACTIONS

Bill Wong provided the following briefing schedule for Case No. 13-70544, which involves NRDC's challenge to SCAQMD Rule 317: The Petitioners' opening brief is due June 9, 2014. The answering brief is due September 8, 2014. The respondents'/intervenor's briefs are due September 30, 2014. The optional reply brief is due October 30, 2014.

With regard to the case *Exide Technologies, Inc. v. South Coast Air Quality Management District*, Los Angeles Superior Court Case No. BS146770, Mr. Wong reported that the court denied the request for preliminary injunction on April 7, 2014, on the ground that Exide had not yet exhausted its administrative remedies.

(Note: See Attachment 3 for complete Litigation Update Report).

Discussion

Mr. Montez asked what is meant by "administrative remedies." Mr. Wong responded that Exide was seeking Hearing Board relief and is responsible for complying with SCAQMD rules--one way to achieve this would be to reduce throughput which would reduce emissions. Mr. Montez asked what would happen if the company took all the measures that were currently available and still was unable to comply. Dr. Lyou responded that the company would have the option of going before the Hearing Board to request a variance from the Rules and Regulations to allow time to find a solution and still continue to operate. He added that, in the past, SCAQMD has revoked or revised rules because the technology available did not reduce emissions as expected. Mr. Coleman voiced his personal opinions that: (1) with regard to technology forcing rules, SCAQMD must show that the technology will likely be available by the time compliance with the rule is required; (2) with respect to the lead rule in particular, SCAQMD had another facility that was already meeting the proposed emission limits so there was not a question of technical feasibility; and (3) that the issue of cost effectiveness is not as big a factor when dealing with toxic air contaminants due to the significant adverse health impacts that could occur compared to the more transient health impacts related to some criteria pollutants.

Mr. LaMarr asked if there is a possibility that the parties will agree to mediation for Case No. 6, *Natural Resources Defense Council, Inc., et al., v. U.S. EPA*, which challenges the approval of SCAQMD Rule 317. Mr. Wong responded that it would be unlikely given that mediation was unsuccessful for the San Joaquin case.

Mr. Quinn reported that, according to a news report, Exide Technologies may temporarily lay off approximately 120 employees which could take effect in 60 days.

EPA AND FEDERAL ACTIVITIES

There was no report.

CARB REGULATORY ACTIVITIES

The following items are scheduled to go before CARB's Board April 24, 2014:

- Amendments to the Regulation to Reduce Emissions of Diesel Particulate Matter, Oxides of Nitrogen, and Other Criteria Pollutants From In-Use On-Road Diesel-Fueled Vehicles
- Proposed Approval of the Amendments to the CA Cap on GHG Emissions and Market-Based Compliance Mechanisms (Second Hearing of Two)

The following items are scheduled to go before CARB's Board May through September 2014:

- Regional Haze Mid-Course Review
- Proposed First Update to the Climate Change Scoping Plan (Second Hearing of Two)
- 8-Hour Ozone SIP Emission Inventory Submittal
- Consider Approval of the Imperial PM2.5 Plan
- Update to the Enhanced Fleet Modernization Program Guidelines
- FY 2014/2015 Air Quality Improvement Program Funding Plan
- Strategy to Address AB 8 (Perea) Requirements for ARB's Incentive Programs
- Updates to the Carl Moyer Program Guidelines
- Alternative Diesel Fuel Regulation
- Minor Updates to the 1997 8-Hour Ozone Standard SIPs: Coachella Valley and Western Mojave Desert Ozone Nonattainment Areas
- Amendments to the ATCM for Chromium Plating and Chromic Acid Anodizing Facilities
- Proposed Adoption of a Rice Protocol for Cap and Trade Regulation (First Hearing of Two)

CONSENSUS BUILDING

Jayne Joy reported that the HRAG Ad Hoc Consensus Building Working Group will be meeting on May 2, 2014, immediately after the SCAQMD Governing Board meeting. George Minter from the Southern California Gas Company will be giving a presentation on "Pathways to Near-Zero Emission Natural Gas Heavy Duty Vehicles," and will discuss the accompanying white paper called "Fleets and Fuels." Southern California Gas Company has offered to provide lunch for the participants.

SUBCOMMITTEE STATUS REPORTS

A. Freight Sustainability (Lee Wallace).

Dan McGivney provided the following update. The California Energy Commission Lead Commissioner on the 2014 Integrated Energy Policy Report (IEPR) is conducting a workshop on April 23, 2014, to investigate alternative financing options and strategies to support ongoing development and deployment of advanced technology, low carbon vehicle and fueling projects that are needed to reduce greenhouse gas and criteria emissions from the transportation sector in support of California's climate and air quality goals (http://www.energy.ca.gov/2014_energy_policy/documents/2014-04-23_workshop/2014-04-23_IEPR_workshop.pdf). On May 5, 2014, the California Air Resources Board will hold a public forum for the development of the Sustainable Freight Strategy. Materials,

including an agenda, will be posted on the Sustainable Freight Transport Initiative website at: <http://www.arb.ca.gov/gmp/sfti/sfti.htm>. The forum will be held at 10:00 a.m. at Cal/EPA Headquarters Building in Sacramento at 1001 I Street in the Coastal and Sierra Hearing Rooms on the 2nd Floor (<http://www.arb.ca.gov/lispub/rss/displaypost.php?pno=7545>). The California Freight Advisory Committee will be meeting on May 14, 2014, in Sacramento (<http://dot.ca.gov/hq/tpp/offices/ogm/cfac1.html>). The 2014 Alternative Clean Technologies (ACT) Expo is scheduled for May 5-8, 2014, at the Long Beach Convention Center (<http://www.actexpo.com/>).

B. Small Business Considerations (Bill LaMarr)

There was no report.

C. Environmental Justice (Curt Coleman)

Mr. Coleman provided the following update: the Los Angeles Times had an article announcing the availability of OEHHA's draft Communities Environmental Health Screening Tool: CalEnviroScreen Version 2.0 (CalEnviroScreen 2.0). CalEnviroScreen is a screening methodology that can be used to help identify California communities that are disproportionately burdened by multiple sources of pollution. One change is that the CalEnviroScreen 2.0 results have been analyzed at the census tract scale whereas the previous Version 1.1 was analyzed at the ZIP code scale. Also, a measure of drinking water quality across California has been added to the screening tool which takes into account the number, concentration, and relative toxicity of contaminants. CalEnviroScreen 2.0 uses the portion of the daily maximum 8-hour ozone concentration over the state 8-hour standard (0.070 ppm), averaged over three years, 2009 to 2011, whereas Version 1.1 used the federal 8-hour standard (0.075 ppm) for this calculation. A list of major changes between the draft 2.0 version and the 1.1 version can be found on the OEHHA's website (<http://oehha.ca.gov/ej/pdf/CES20SummaryMajorChanges.pdf>). A webinar will be held on April 30, 2014, at 11:00 a.m. to 12 noon PST (<http://oehha.ca.gov/ej/ces2.html>). The Department of Toxic Substances Control (DTSC) announced the launch of enhancements to its EnviroStor Data Management System public web site. The site will now provide detailed information on inspections and enforcement actions of permitted hazardous waste facilities to further aid in the gathering information about these sites. EnviroStor will now allow searches for information on completed facility inspection and enforcement actions, in addition to site investigation, site cleanup, permitting, and planned, current or completed corrective actions under DTSC's oversight (https://dtsc.ca.gov/PressRoom/upload/Media_Advisory-DTSC-Enhances-the-Publics-Access-to-Inspection-and-Enforcement-Data.pdf).

D. New Source Review (Bill Quinn)

Mr. Quinn reported that the subcommittee met on March 27, 2014. Mohsen Nazemi, SCAQMD's DEO of Engineering and Compliance, gave a presentation on the ERC application review and verification process (Attachment 4). During his presentation, Mr. Nazemi pointed out that many businesses lose the opportunity to get ERCs (e.g. when facilities shut down or cease operating equipment) because they wait too long to begin the application process. He stressed the importance of companies coordinating with SCAQMD staff when shutting down equipment or closing facilities so they do not lose this valuable commodity. At the conclusion of his presentation, Mr. Nazemi asked for suggestions on how to streamline the process.

Public Comment: *Vlad Kogan (Orange County Sanitation District) asked, if a facility installs equipment that reduces emissions, such as NOx and SOx, well beyond the limit under the rule, for example, Rule 1110.2 (<http://www.aqmd.gov/rules/reg/reg11/r1110-2.pdf>), can they claim ERCs?* Both Mr. Quinn and Dr. Chang responded that ERCs would be based on the emission reduction less A BACT discount.

E. Climate Change (David Rothbart)

Mr. Rothbart reported on what was discussed at the subcommittee meeting on April 15, 2014: Joshua Bledsoe (Latham & Watkins) provided an update on the oral argument in the Supreme Court on EPA's GHG Permitting Authority in *UARG v. EPA*. CARB staff provided an update on the scoping plan, with a focus on the energy and transportation sectors. EPA gave a presentation on climate change adaptation. The discussion on climate change and drought in California by Professor Diffenbaugh from Stanford University will be scheduled for a future meeting after his research has undergone peer review and has been published. Mr. Rothbart reported that the Los Angeles Regional Collaborative for Climate Action and Sustainability (LARC) will be holding a forum called "Envisioning the Future: Cities & Adaptation to Climate Change." The forum will be held at Metropolitan Water District of Southern California on April 29, 2014, from 9:00 a.m. to 12:30 p.m. in Room 1-102. The forum is a public event to explore climate change efforts in the Los Angeles region and will highlight adaptation and the urban environment and California's environmental future.

REPORT FROM AND TO THE STATIONARY SOURCE COMMITTEE

Dr. Chang reported that the following items were discussed at the Stationary Source Committee meeting on April 18, 2014:

- Execute Contract and Reissue RFP for Third –Party Investigations of Unplanned Shutdowns of Emission Control Devices at Large Lead-Acid Battery Recycling Facilities
- Rule 1168-Adhesive and Sealant Applications
- Rule 1130-Graphic Arts
- Update on Rule 1147
- 2013 Annual Report on AB 2588 Air Toxics Hot Spots Program

Discussion

There was a discussion on fracking, the AQMP, Rule 1148.1- Oil and Gas Production Wells (<http://www.aqmd.gov/rules/reg/reg11/r1148-1.pdf>), and on odors.

OTHER BUSINESS

None.

PUBLIC COMMENT

(See comments by Vlad Kogan (OCSD) under NSR Subcommittee Report).

ADJOURNMENT

The meeting was adjourned at 11:57 a.m. The next meeting of the Home Rule Advisory Group is scheduled for 10:00 a.m. Tuesday, May 20, 2014.

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT
PROPOSALS FOR FEDERAL TRANSPORTATION LEGISLATION:
ADVANCED TECHNOLOGIES TO REDUCE AIR POLLUTION FROM FREIGHT TRANSPORT
TO SUPPORT ATTAINMENT OF FEDERAL AIR QUALITY STANDARDS**

As approved by SCAQMD Legislative Committee 4/11/14

**Proposal 1. Increased Federal Funding Share for Infrastructure Enabling or Incentivizing
Advanced Freight Technologies**

Amend MAP-21 Section 1116 as follows (proposed amendments are shown in underline/strike-out):

SEC. 1116. PRIORITIZATION OF PROJECTS TO IMPROVE FREIGHT MOVEMENT.

- (a) **IN GENERAL.**—Notwithstanding section 120 of title 23, United States Code, the Secretary may increase the Federal share payable for any project to 95 percent for projects on the Interstate System and 90 percent for any other project if the Secretary certifies that the project meets the requirements of this section.
- (b) **INCREASED FUNDING.**—To be eligible for the increased Federal funding share under this section, a project shall—
 - (1) demonstrate the improvement made by the project to the efficient movement of freight, including making progress towards meeting performance targets for freight movement established under section 150(d) of title 23, United States Code; and
 - (2) be identified in a State freight plan developed pursuant to section 1118.
- (c) **ELIGIBLE PROJECTS.**—Eligible projects to improve the movement of freight under this section may include, but are not limited to—
 - (1) construction, reconstruction, rehabilitation, and operational improvements directly relating to improving freight movement;
 - (2) intelligent transportation systems and other technology to improve the flow of freight;
 - ~~(3) efforts to reduce the environmental impacts of freight movement on the primary freight network;~~
 - (4) railway-highway grade separation;
 - (5) geometric improvements to interchanges and ramps.
 - (6) truck-only lanes;
 - (7) climbing and runaway truck lanes;
 - (8) truck parking facilities eligible for funding under section 1401;
 - (9) real-time traffic, truck parking, roadway condition, and multimodal transportation information systems;

- (10) improvements to freight intermodal connectors; and
 - (11) improvements to truck bottlenecks.
- (d) **DEFINITION OF “EFFORTS TO REDUCE THE ENVIRONMENTAL IMPACTS OF FREIGHT MOVEMENT.”**—As used in Section 1116 (c)(3), “efforts to reduce the environmental impacts of freight movement” shall include, but not be limited to,—
- (1) transportation infrastructure that enables or incentivizes utilization of Advanced Freight Transport Technologies (as defined in subsection (e)), including, but not limited to, construction of —
 - (A) infrastructure that is dedicated for use by Advanced Freight Transport Technologies, such as highway lanes, rail lines, or lanes providing expedited access to freight facilities;
 - (B) infrastructure that will be operated in a manner to create incentives for use by Advanced Freight Transport Technologies, such as through toll or access fee discounts for highways or freight facilities; and
 - (C) fueling or charging infrastructure, or wayside power, to provide energy for Advanced Freight Transport Technologies; and
 - (2) actions to reduce public health impacts in communities near freight facilities caused by emissions from freight movement, including, but not limited to—
 - (A) deployment of advanced freight technologies or other technologies and strategies to reduce emissions near such communities beyond the benefits of adopted regulatory standards; and
 - (B) establishment of sufficient distance between diesel-powered freight operations and communities, schools, workplaces and other sensitive receptors to prevent significant health impacts.
- (e) **DEFINITION OF ADVANCED FREIGHT TRANSPORT TECHNOLOGY.** — Advanced Freight Transport Technologies shall include the following:
- (1) **TRUCKS.** — Heavy-duty trucks powered by –
 - (A) fuel cells;
 - (B) electricity;
 - (C) hybrid-electric technologies with significant zero-emission range, which may use range extenders powered by diesel, natural gas, fuel cells or other power sources; “significant zero-emission range” shall be defined by the Administrator of the EPA so as to encompass a substantial portion of typical daily service in nonattainment areas; or
 - (D) any other technology that emits nitrogen oxides and fine particulates (PM2.5) at rates at least 90% lower than the most stringent applicable emission standards adopted by EPA, or which the Administrator of the EPA determines creates sufficiently low emissions of such pollutants to meet

the air quality attainment needs of all areas designated nonattainment under the Clean Air Act (including areas classified as Extreme Ozone nonattainment.)

- (2) LOCOMOTIVES. — Freight locomotives powered by –
 - (A) natural gas with advanced emission controls achieving emission levels substantially lower than EPA Tier 4 locomotive standards (as determined by the Administrator of the EPA);
 - (B) fuel cells;
 - (C) electricity;
 - (D) hybrid-electric technologies with significant zero-emission range, which may use range extenders powered by diesel, natural gas, fuel cells or other power sources; “significant zero-emission range” shall be determined by the Administrator of the EPA so as to encompass a substantial portion of typical service in nonattainment areas; or
 - (E) any other technology satisfying the criteria in paragraph (e)(1)(D) above.
- (3) CARGO HANDLING. — Cargo handling equipment powered by –
 - (A) electricity;
 - (B) fuel cells;
 - (A) hybrid-electric technologies with significant zero-emission range, which may use range extenders powered by diesel, natural gas, fuel cells or other power sources; “significant zero-emission range” shall be determined by the Administrator of the EPA so as to encompass a substantial portion of typical daily service; or
 - (C) any other technology satisfying the criteria in paragraph (e)(1)(D) above.

Proposal 2. Grant Program for Development, Demonstration and Deployment of Advanced Freight Transport Technologies (New)

- (a) GRANT PROGRAM AUTHORIZATION. – There shall be authorized \$50 million per year for five years to fund eligible projects and programs to develop and demonstrate Advanced Freight Transport Technologies (as defined in Proposal 1), and provide incentives for commercialization and deployment in major freight corridors to support broad markets for advanced technologies.
- (b) ELIGIBLE PROJECTS AND PROGRAMS.— Projects and programs eligible for funding under this section shall be undertaken by a state or local government in partnership with academic or industry participants, and shall be designed to –
 - (1) develop, improve, or expand applications for Advanced Freight Transport Technologies;

- (2) implement prototype demonstrations, or larger scale demonstrations, of Advanced Freight Transport Technologies;
 - (3) assist in overcoming obstacles to commercialization of Advanced Freight Transport Technologies; or
 - (4) provide incentives for commercialization and deployment of Advanced Freight Transport Technologies in major freight corridors. Incentives under this paragraph may include, but are not limited to, subsidies or financing of the incremental capital cost of Advanced Freight Transport Technologies; discounted tolls for Advanced Technology vehicles; dedicated lanes to expedite access to ports and railyards by Advanced Technology vehicles; and public recognition programs for companies utilizing Advanced Technologies.
- (c) **PROCESS AND FUNDING PRIORITIES** – The Secretary shall establish a competitive grant program, and shall prioritize funding for projects or programs that involve –
- (1) technology development and demonstration by entities with a history of successful technology advancement, and expertise regarding emission reduction needs in an area substantially impacted by freight emissions;
 - (2) technologies that have potential to provide economic and other co-benefits, including ability to move larger volumes of goods with less energy and emissions, fuel and maintenance cost reductions, improved energy cost certainty, job creation in the United States, and reduction in emissions impacting climate;
 - (3) a variety of technologies in order to support choice for freight carriers;
 - (4) technology deployment in major freight corridors located in areas of the nation that are designated nonattainment under the Clean Air Act and are substantially impacted by freight emissions, with priority for initial deployment in communities that are located near freight facilities and most significantly impacted by local diesel emissions; and
 - (5) leveraging of resources and funds through partnerships with state or local government, industry, academia, nonprofit or foundation, or other sources; and
- (d) **MINIMUM FUNDING MATCH.**--Eligible projects and programs shall include at least a 20 percent funding match from non-federal sources.
- (e) **FEDERAL AGENCY COORDINATION.** – The Secretary shall seek to coordinate funding under this section with technology development, demonstration and deployment funding by other federal agencies, to maximize effective and efficient use of resources.

Proposal 3. Grant Program for Fueling and Charging Infrastructure (New)

- (a) GRANT PROGRAM AUTHORIZATION. – There shall be authorized \$50 million each year for five years for the Secretary of Transportation to provide grants for projects or programs that fund installation of fueling and charging infrastructure for trucks, locomotives and cargo handling equipment employing Advanced Freight Transport Technologies (as defined in Proposal 1).
- (b) ELIGIBLE PROJECTS AND PROGRAMS. – Projects and programs eligible for funding under this section shall be undertaken by a state or local government in partnership with industry participants.
- (c) PROCESS AND FUNDING PRIORITIES – The Secretary shall establish a competitive grant program, and shall prioritize funding for projects or programs that involve –
 - (1) deployment along major freight corridors located in areas of the nation that are designated nonattainment under the Clean Air Act and are substantially impacted by freight emissions, with priority for initial deployment in communities that are located near freight facilities and most significantly impacted by local diesel emissions;
 - (2) fueling and charging infrastructure for a variety of technologies in order to support choice for freight carriers; and
 - (3) leveraging of resources and funds through partnerships with state or local government, industry or other sources.
- (d) MINIMUM FUNDING MATCH. -- Eligible projects and programs shall include at least a 20 percent funding match from non-federal sources.
- (e) FEDERAL AGENCY COORDINATION. – The Secretary shall seek to coordinate funding under this section with fueling and charging infrastructure funding by other federal agencies, to maximize effective and efficient use of resources.

Proposal 4. Incentives in Fuel Economy Standards (New)

- (a) INCENTIVES. – The Secretary shall, after consulting with the Administrator of the EPA, ensure that regulations adopted after (date of enactment) pertaining to fuel efficiency for heavy duty trucks are designed to create incentives for deployment of increasing numbers of trucks employing Advanced Freight Transport Technologies (as defined in Proposal 1). Such incentives may take the form of additional credit for trucks employing Advanced Freight Transport Technologies, or any other form of incentive that the Secretary determines is likely to significantly incentivize development and commercialization of such technologies in time to support attainment of ozone air quality standards under the Clean Air Act.
- (b) FUEL AND TECHNOLOGY NEUTRALITY. – Incentive programs under this section shall be designed to be fuel-neutral and technology-neutral.

Proposal 5. Federal Fleets (New)

- (a) The Secretary shall make information available to procurement programs of federal agencies regarding the potential to demonstrate Advanced Freight Transport Technologies funded under this act.
- (b) No later than 18 months after (date of enactment), the *(insert Executive Branch office)* shall establish and publish policies for federal agencies to acquire Advanced Freight Transport Technologies to the maximum extent operationally and financially feasible.

Proposal 6. COMMUTER RAIL TIER 4 LOCOMOTIVE GRANT PROGRAM (New)

- (a) GRANT PROGRAM AUTHORIZATION. – There shall be authorized \$80 million per year for five years for a competitive grant program to assist commuter rail agencies upgrade their fleet to the least-polluting technology by:
 - (1) Replacing existing locomotives that meet but do not exceed the EPA Tier Zero, Tier 1 or Tier 2 emission standards, with locomotives that meet the EPA’s Tier 4 emission standards, or
 - (2) Retrofitting the engines of existing locomotives that meet but do not exceed the EPA Tier Zero, Tier 1 or Tier 2 emission standards, to engines that meet EPA’s Tier 4 emission standards
- (b) ELIGIBILITY – All commuter rail agencies which have begun, as of July 1, 2014, to replace Tier zero, Tier 1 or Tier 2 locomotives with Tier 4 locomotives, and which serve an area designated as nonattainment for PM2.5 and nonattainment for ozone under the Clean Air Act.
- (c) LOCAL SHARE – The local share of 30% shall be calculated on a fleet-wide basis and not a locomotive by locomotive basis. A commuter rail agency shall be deemed to have met the 30% local match if it provides funding for at least 30% of the cost to replace at least 50% of its Tier 0, Tier 1 and Tier 2 locomotives in its fleet as of July 1, 2013, even if those funds have already been expended on Tier 4 locomotives before the enactment of this Act.
- (d) AVAILABILITY OF FUNDS – Any amount made available under this section—
 - (1) Shall remain available to a project for 3 years after the fiscal year for which the amount is made available or appropriated; and
 - (2) That remains unobligated at the end of the period described in paragraph (1) shall be added to the amount made available in the following year.

Proposal 7. Grant Program for Development, Demonstration and Deployment of Advanced Passenger Locomotive Technology (New)

- (a) GRANT PROGRAM AUTHORIZATION. – There shall be authorized \$40 million per year for five years to fund eligible projects and programs to develop and demonstrate advanced passenger locomotive technologies.

- (b) ELIGIBILITY.—
 - (1) Applicants for grants under this section must be commuter rail agency, although they may partner with academic participants, cities, counties, MPOs, state or local air quality agencies, and/or industry participants.
 - (2) Projects and programs eligible for funding under this section shall be designed to –
 - (A) develop, improve, or expand applications for advanced passenger locomotive technologies; or
 - (B) implement prototype demonstrations, or larger scale demonstrations, of advanced passenger locomotive technologies.
- (c) DEFINITION OF ADVANCED PASSENGER LOCOMOTIVE TECHNOLOGIES. -- Advanced Passenger Locomotive Technologies shall mean passenger locomotives powered by –
 - (A) natural gas with advanced emission controls achieving emission levels substantially lower than EPA Tier 4 locomotive standards (as determined by the Administrator of the EPA);
 - (B) fuel cells;
 - (C) an electric battery tender car;
 - (D) hybrid-electric technologies with significant zero-emission range, which may use range extenders powered by diesel, natural gas, fuel cells or other power sources; “significant zero-emission range” shall be determined by the Administrator of the EPA so as to encompass a substantial portion of typical service in nonattainment areas; -
 - (E) a combination of the above or another energy source achieving emissions levels substantially lower than EPA Tier 4 locomotive standards that can reasonably be anticipated to meet performance standards; and
 - (F) refueling and/or recharging infrastructure for locomotives powered by fuels mentioned in subparagraphs (A), (B), (C), (D), or (E).
- (d) MINIMUM FUNDING MATCH.--Eligible projects and programs shall include at least a 20 percent local share. In addition to local funds, eligible match sources include Section 5309 New Starts, Section 5309 Fixed Guideway Modernization, Section 5307 Urbanized Area formula Program, Section 5337 State of Good repair Program Surface Transportation Program and Congestion Mitigation Air Quality Improvement Program. Match source also includes grantee’s previous investments that have a demonstrable link to supporting the grantee’s project under this program.

Proposal 8. Federal Regulations to Implement State Implementation Plans Under the Clean Air Act (New)

This proposal would require EPA to adopt rules to implement the State Implementation Plan (SIP) in circumstances where state and local authority is preempted. Like the above proposals for surface transportation legislation, this proposal would potentially affect equipment involved in freight transport, i.e. interstate trucks and locomotives (in addition to ships and aircraft). This proposal, however, is drafted to amend the Clean Air Act, because the proposal would implement SIPs under

that act. It would need to be determined whether this proposal is sufficiently germane to the surface transportation bill to be included in that legislation.

Add new Subdivision 110(q) to the Clean Air Act, to read as follows:

(a) FEDERAL ATTAINMENT MEASURES. —

- (1) The Administrator shall promulgate regulations applicable to sources within the regulatory authority of the Environmental Protection Agency which shall be sufficient, in conjunction with measures contained in the applicable state implementation plan, to attain all national primary ambient air quality standards throughout the United States by the applicable attainment dates.
- (2) The duty imposed by this subdivision applies if the Administrator concurs with a state's finding in a state implementation plan revision that the state implementation plan includes all feasible measures that are not preempted by federal law, yet one or more nonattainment areas is unable to attain a national ambient air quality standard by the applicable date. The Administrator shall concur with, or disapprove, a state's finding within the time required to act on the implementation plan revision.
- (3) The regulations required by this subdivision may, in the Administrator's discretion, be applicable only to one or more specified states, regions, or nonattainment areas.
- (4) In implementing this subdivision, the Administrator may adopt regulations applicable to motor vehicles and engines, and to non-road vehicles and engines, which are no longer new.



Federal Surface Transportation Law (MAP-21) Reauthorization Proposals



Marc Carrel
Wednesday, April 23, 2014



MAP-21 Background

- HR 4348 - “Moving Ahead for Progress in the 21st Century” (MAP-21)
- \$105 billion over 27 months (expires 9/30/14)
- Restructured federal highway programs by eliminating or consolidating approximately 60 programs into 4 core formula programs.
- First efforts to begin to address freight – but not multi-modally
 - National Freight Policy, NFAC, state committees, PNRS



Reauthorization Challenges

Open Questions:

- **How long?** 2, 4 or 6 yr bill?
- **How much?** Same as MAP-21 or more
- **Funding Source?** HTF insolvency expected in August, and Other Funding Sources Lack Support

Challenges:

- Election Year Politics
- Decentralized jurisdiction
 - Authorization (Policy) vs. Appropriation (Funding)
 - Senate: EPW (highways), Commerce (rail and safety), Banking (transit)

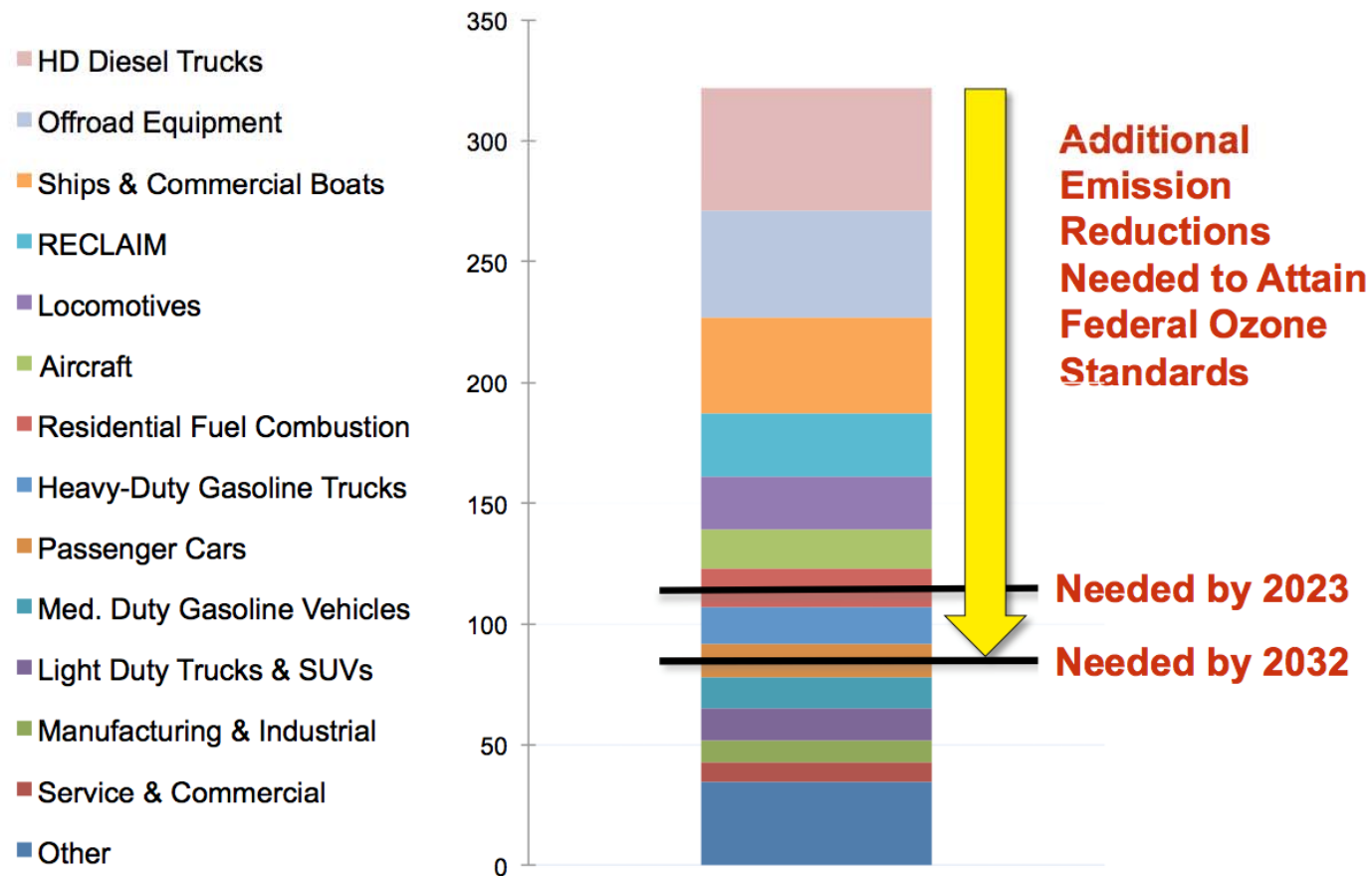


MAP-21 Reauthorization

- SCAQMD Key goals:
 - improving mobility
 - reducing environmental impacts of freight movement
- Policy underlying SCAQMD proposals:
 - economic growth can be accommodated while simultaneously addressing environmental needs through –
 - clean technologies
 - Efficiency

South Coast Region Nitrogen Oxides Emissions in 2023 with Adopted Standards

tons per day



Source: Ambient ozone modeling conducted for 2012 AQMP by SCAQMD, final data



Overview SCAQMD Approach

- Focus on grants and incentives
 - to encourage development and deployment of low and zero emission freight transport technologies, and supporting infrastructure
 - technologies are needed to attain enforceable federal air quality standards
- Advanced technology policies for federal fleets



Proposals 1-3 – Sustainable Freight

Proposal 1: Incentivizes highway infrastructure that promotes cleaner freight by providing 90% or 95% federal share of funding.

Proposal 2: Competitive grant program for development, demonstration and deployment of advanced freight vehicle technologies. (\$50 m/yr for 5 yrs)

Proposal 3: Competitive grants for fueling and charging infrastructure (\$50 m/yr for 5 yrs)



Proposals 4-5 – Federal Involvement

Proposal 4: Requires DOT fuel efficiency standards for heavy duty trucks to be designed to create incentives to deploy advanced clean technologies while remaining fuel neutral.

Proposal 5: Requires federal agencies to craft policies for acquiring advance clean freight vehicles for their fleets. Would provide manufacturers greater certainty there will be a market for such vehicles.



Proposals 6 & 7 – Passenger Rail

Proposal 6 – Grant program for commuter rail agencies that have begun upgrading fleets to Tier 4 to support continuation of such efforts. (\$80 m/yr for 5 years)

Proposal 7 – Grant programs for demonstration projects of locomotives using natural gas, fuel cells, batteries or hybrid technologies. (\$40 m/yr for 5 years)



Proposal 8 – Federal Emission Controls

- Addresses Catch-22:
 - federal law mandates state to adopt measures to attain air quality standards, but restricts state and local authority to regulate emissions from key sources (e.g. locomotives, oceangoing vessels)
- Proposal: require federal government to reduce emissions from sources over which it has authority if—
 - state has adopted all feasible measures within its authority, but additional emission reductions from federally-regulated sources are needed
- Does not add to SCAQMD regulatory authority

Regional Comments

- **RCTC** – “These proposed grant programs advance helpful causes to our region. Our position is that any of these programs must be funded through increased revenue to the HTF and not come at the expense of an existing core program.” Also, Proposal 8 “is intriguing and...there might be positive outcomes for our region.”
- **SANBAG** – “proposals raise a number of questions we hope can be further clarified,” e.g. funding sources, undefined terms, preemption of local authority, and regulatory impact on industry
- **LA Metro**: “We are supportive of additional federal resources being directed to improve the quality of our air, especially near freight corridors....We are also supportive of directing federal funds to lower emissions associated with locomotives...”
- **OCTA** – “These are laudable goals” but where is funding coming from?
- **Metrolink** - Offered minor edits to the two passenger rail proposals



Next Steps

- Legislative Committee recommended Board adopt proposals at May 2 meeting.
- Working with regional transportation partners
- Sharing with Federal officials and staff

STATUS REPORT ON LITIGATION**OFFICE OF GENERAL COUNSEL**

DATE: April 10, 2014
TO: Home Rule Advisory Group
FROM: William B. Wong, Principal Deputy District Counsel
SUBJECT: Status Report Regarding Litigation

1. CASE: **Exide Technologies, Inc. v. South Coast Air Quality Management District, Los Angeles Superior Court Case No. BS146770**

NATURE OF CASE: On February 7, 2014, Exide filed a petition for writ of mandate and complaint for injunctive and declaratory relief challenging the amendments to Rule 1420.1 adopted January 10, 2014. The claims include alleged violations of the California Environmental Quality Act and arbitrary and capricious rulemaking. While Exide purports to only be challenging the negative pressure requirement, their CEQA arguments, if successful, could invalidate the entire rule.

STATUS: Exide has filed a motion for preliminary injunction to stay the effectiveness of the negative pressure requirements which becomes applicable April 10, 2014. *The motion was heard by Judge Goodman on March 28, 2014 and was denied.*

2. CASE: **U.S. EPA Petition for Declaratory Order – Surface Transportation Board, Docket No. FD35803**

NATURE OF CASE: On January 24, 2014, EPA filed a petition with the Surface Transportation Board (STB), which primarily regulates railroads, for an order determining whether SCAQMD Rules 3501 and 3502 would be preempted if EPA approved them into the SIP. The railroads argue that these rules, which limit idling to 30 minutes in certain cases, and required simple records of events exceeding 30 minutes, are preempted by the Interstate Commerce Commission Termination Act (ICCTA).

STATUS: Any interested person may file a reply with the STB within 20 days (February 13, 2014). We filed pleadings supporting our position and obtained support from Communities for Environmental Justice, CARB, and the State of Massachusetts, which has a SIP-approved rule applicable to locomotive idling.

On February 26, the STB opened a proceeding giving the parties until March 28 to file further evidence and arguments and until April 14 to file replies. *All parties filed additional evidence and/or arguments on March 28.*

3. **CASE:** **SCAQMD v. U.S. EPA, U.S. Court of Appeals, Ninth Circuit, Case No. 13-73936**

NATURE OF CASE: Pursuant to the Board's directive, staff filed a challenge to EPA's action creating a separate nonattainment area for Morongo lands with a classification of "severe-17" for ozone. SCAQMD is concerned that this gives businesses locating at Morongo a competitive advantage over South Coast Basin facilities so that facilities will preferentially locate there, causing adverse air quality effects downwind in the Coachella Valley.

STATUS: The parties agreed to participate in the Ninth Circuit Court of Appeals mediation program. There was a mediation conference call held on February 12, 2014, and the parties will hold a call on March 5, 2014. *The parties have held two settlement calls and have scheduled a further mediation call for May.*

4. **CASE:** **Utility Air Regulatory Group v. U.S. EPA, U.S. Supreme Court Case No. 12-1146 (consolidated with 12-1272, 12-1248, 12-1254, 12-1268, and 12-1269)**

NATURE OF CASE: Various industry groups filed a challenge to EPA's GHG permitting rules, arguing that the Clean Air Act did not authorize EPA to regulate GHGs from stationary sources. The D.C. Circuit Court of Appeals upheld EPA's rules. The U.S. Supreme Court granted review.

STATUS: *(No change since last month.)* Pursuant to prior authorization, SCAQMD joined an amicus brief, together with UCLA Law School's Emmett Center for Climate Change, addressing the practicalities of GHG permitting, our experience so far, and our support for EPA's phased approach to GHG permitting. The case was argued in the U.S. Supreme Court on February 24, 2014.

5. **NEW CASE:** **Friends of the Fire Rings v. South Coast Air Quality Management District and City of Newport Beach, Orange County Superior Court No. 30-2013-00690328-CU-WM-CXC**

NATURE OF CASE: Petitioners challenge the SCAQMD's adoption of amendments to Rule 444 relating to fire rings on the beach. The City of Newport Beach has been added as a "DOE" defendant, since that City has voted to remove about half of the fire rings at Balboa Pier and

Corona del Mar. The complaint alleges violation of the Coastal Act, CEQA, the Equal Protection Clause, and numerous provisions of the Health & Safety Code pertaining to the substance and process for the rule amendments. The District was served on December 12, 2013, and the City of Newport Beach on January 2, 2014.

STATUS:

A hearing on Petitioner's motion for Preliminary Injunction, which sought to stay the Board's July 2013 amendments regarding beach burning, was held on January 31, 2014. Orange County Superior Court Judge Robert Moss denied the motion for preliminary injunction, finding that the District had presented adequate evidence to show that wood burning can be harmful to human health and that the amendments allowed the use of charcoal and liquid fuel and did not mandate the specific configuration of the fire rings.

The parties have met and conferred and *stipulated* to transfer the case to San Diego County pursuant to section 30806 of the Public Resources Code. *On March 20, 2014, the court served a notice of transfer to the Superior Court of San Diego County.*

6. CASE:

Natural Resources Defense Council, Inc., et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 13-70544

NATURE OF CASE:

On February 12, 2013, Natural Resources Defense Council and Communities for a Better Environment filed a lawsuit against EPA challenging its approval of South Coast Air Quality Management District Rule 317, Clean Air Act Non-Attainment Fee. Rule 317 is a local fee rule submitted to address section 185 of the Clean Air Act with respect to the 1-hour ozone standard for anti-backsliding purposes. Rule 317 relies on fees imposed on mobile sources under state law. EPA finalized approval of Rule 317 as an alternative to the program required by section 185 and determined that the District's alternative fee-equivalent program is not less stringent than the program required by section 185.

STATUS:

EPA's motion to continue the stay pending the San Joaquin lawsuit was denied. The court established the following briefing schedule: *the opening brief is due June 9, 2014; the answering brief is due September 8, 2014; the respondents-intervenors' briefs are due September 30, 2014; and the optional reply brief is due October 30, 2014.*

7. CASE:

Communities for a Better Environment, et al. v. U.S. EPA, et al., U.S. Court of Appeals, Ninth Circuit, Case No. 13-70167

BACKGROUND:

On January 14, 2013, Communities for a Better Environment (CBE) and California Communities Against Toxics (CCAT) filed a

Petition for Review of EPA's final rulemaking that was issued on November 14, 2012. The challenged rulemaking constituted EPA's supplemental, final action to approve a source-specific SIP revision allowing the District to transfer offsetting emission reductions for PM₁₀ and SO_x to the CPV Sentinel Energy Project, a natural gas fired power plant, through the AB 1318 tracking system. EPA first issued a final rulemaking to approve the District's transfer of offsets to the CPV Sentinel Energy Project on April 20, 2011. That rulemaking was challenged by the same Petitioners through a Petition to Review in the Ninth Circuit (Case No. 11-71127). After briefing and oral argument in that case, the Ninth Circuit issued an order remanding the final rule, without vacatur, to EPA on July 26, 2012. This second, final rulemaking is the product of EPA's re-examination of the April 20, 2011 rulemaking.

STATUS:

(No change since last month.) The Board authorized staff to file a motion to intervene on behalf of EPA, which CPV Sentinel and the District have each filed. The court granted both parties' motions. Petitioners' opening brief was filed on February 7, 2014. Respondent's answering brief is due on or before May 7, 2014; and the Intervenor's (CPV Sentinel, LLC and the District) briefs are due on or before June 9, 2014; Petitioners' optional reply is due on or before June 30, 2014.

8. CASE:

Medical Advocates for Healthy Air, et al v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-73386

BACKGROUND:

On October 19, 2012, Petitioners filed a Petition for Review of U.S. EPA's approval of San Joaquin Valley Air Pollution Control District's SIP revision to include SVAPCD's equivalent alternative program to meet the Clean Air Act's section 185(e) requirements triggered by its failure to attain the revoked one-hour ozone standard. EPA based its approval on its determination that the Clean Air Act allows for such an equivalent program so long as it is not less stringent than straight section 185(e) compliance.

STATUS:

(No change since last month.) With your Board's approval, we as well as SJAPCD and National Environmental Development Association's Clean Air Project moved to intervene in this case. All three requests were granted. All briefing on the case has been completed and numerous other associations have filed amicus briefs. EPA published approval of our section 185(e) equivalent program on December 14, 2012. Different petitioners filed a challenge to SCAQMD's Rule 317 on January 14, 2013. The case is no longer stayed. All briefing has been completed, and the parties await a hearing date.

9. **CASE:** **People ex rel. Imperial County APCD, et al. v. United States Department of Interior, et al., Ninth Circuit Court of Appeals Case No. 12-55856**

NATURE OF CASE: The Board authorized staff to file an amicus brief in support of Imperial County APCD's appeal of a federal district court decision holding that it lacked standing to sue the U.S. Department of the Interior under the National Environmental Policy Act and that the federal government had not waived sovereign immunity regarding failure to comply with the "General Conformity" provisions of the Clean Air Act. The lawsuit arose out of a challenge to the approval of a water transfer between Imperial Irrigation District and three water agencies which would result in less agricultural runoff feeding the Salton Sea, and ultimate exposure of dry lakebed which would create substantial PM10 emissions.

STATUS: **(No change from last month).** The District filed a motion to file an amicus brief, along with its proposed brief, on September 19, 2011. Other air districts including San Joaquin Unified AQMD, Sacramento Metro AQMD, Santa Barbara County APCD, and North Coast APCD joined the District's brief. The amicus brief argues that air districts have standing to enforce NEPA, air districts have sovereign interests in enforcing their conformity rules, and the Clean Air Act and Administrative Procedures Act waive sovereign immunity to allow air districts to enforce their rules. The court has deferred ruling on the District's motion to file an amicus brief until the case is heard on the merits. This case has now been scheduled for oral argument on December 4, 2013. This case was argued on December 4, 2013, before the Ninth Circuit Court of Appeals in Pasadena. We are awaiting the Court's decision.

10. **CASE:** **Communities for a Better Environment, California Communities Against Toxics, Desert Citizens Against Pollution, Natural Resources Defense Council, Inc., and Physicians for Social Responsibility-Los Angeles v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-71340**

NATURE OF CASE: This lawsuit challenges on unspecified grounds EPA's final approval of the 8-hour ozone SIP applicable to the South Coast Air Basin.

STATUS: **(No change from last month.)** The Governing Board at its May 4, 2012 hearing approved filing a Motion to Intervene. The District timely filed a joint motion to intervene with SCAG, which was not opposed by Petitioners or EPA. The motion has been granted. EPA has published a proposed settlement agreement, which calls for the

voluntary dismissal of this lawsuit after EPA's publication of its final notice of action on the District's 1-hour ozone plan.

11. CASE:

Medical Advocates for Healthy Air, et al. v. U.S. EPA, U.S. Court of Appeals, Ninth Circuit, Case No. 12-70630

NATURE OF CASE:

This lawsuit challenges EPA's December 30, 2011 determination that the South Coast Air Basin Area, the San Joaquin Valley Area and the Southeast Desert Modified Air Quality Maintenance Area did not attain the now revoked one-hour ozone standard by the deadline for attainment established under the 1990 amendments to the Clean Air Act (76 Fed. Reg. 82,133). Petitioners take issue with the statutory authority under which EPA made those determinations and assert that EPA should have made its finding under section 179(c) of the Clean Air Act, 42 U.S.C. § 7509(c), a section that they claim would require the nonattaining areas to develop new attainment plans for the now revoked one-hour ozone standard.

STATUS:

(No change from last month.) Your Board granted authorization and the District filed its motion to intervene on behalf of EPA on March 28, 2012. Petitioners opposed the District's motion to intervene and the Court referred the motion and any related filings to the panel assigned to decide the merits of the appeal. San Joaquin Valley Unified Air Pollution Control District's unopposed motion to intervene was granted by the Court. On April 12, 2012, Petitioners and EPA held a telephone conference with the Circuit Mediator. Pursuant to the agreement of the parties, the briefing schedule was vacated and the case was stayed. A mediation conference call was held on January 16, 2014 during which it was reported that San Joaquin's 1-hour ozone plan was adopted and approved by CARB and forwarded to EPA. Based on these representations, the parties have agreed to continue to hold the case in abeyance until EPA issues a final decision on the Valley's 1-hour ozone plan. The court has entered an order to this effect and will schedule a follow-up conference call on June 19, 2014.

12. CASE:

Physicians for Social Responsibility–Los Angeles, et al. v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-70016 (Monitoring)

NATURE OF CASE:

On January 3, 2011, a number of environmental groups filed a challenge in the Ninth Circuit Court of Appeals to EPA's approval of the District's annual air monitoring plan. They argue that EPA should have required SCAQMD to install six (6) air monitors to detect elevated levels of PM2.5 in areas very near heavily traveled roadways. Our position and EPA's is that such monitoring is not required. This is the same issue that was raised in NRDC v EPA,

638 F.3d 1183 (9th Cir. 2011) (conformity case) in which the petitioners were unsuccessful.

STATUS:

(No change since last month.) Both EPA and the District have filed their opposition briefs, and Petitioners have filed their reply brief. EPA has published its final rule on PM-2.5 and has required near-road monitoring. We are awaiting a hearing date from the court.

13. CASE:

Physicians for Social Responsibility et al. v. EPA, Ninth Circuit Court of Appeals Case No. 12-70079 (PM2.5)

NATURE OF CASE:

On November 9, 2011, the U.S. EPA approved in part and disapproved in part the 2007 PM2.5 SIP (including elements from SCAG, SCAQMD, and CARB) which is part of the 2007 AQMP. The only part disapproved was the contingency measures. Physicians for Social Responsibility and others filed a challenge to EPA's approval in the applicable Court of Appeals. The Board authorized staff to file a motion to intervene to help EPA defend the case and that motion (filed jointly with SCAG) was granted. Environmental petitioners raised several issues in opposition to the EPA's proposed SIP approval, including issues regarding the enforceability of control measures, and lack of near-roadway monitoring.

STATUS OF CASE:

(No change from last month.) The Ninth Circuit mediator held a conference with all the parties on February 21, 2012. Following discussions, the mediator set a schedule for the petitioners to submit a proposal to settle the case to defendants and intervenors by March 20. The mediator set a further conference call for April 13 to determine whether further discussion would be fruitful or whether a briefing schedule should be established. Petitioners provided a proposal which would have called for staff to agree to near roadway monitoring for PM2.5, to adopt new contingency measures which would be developed through mediation with the petitioners, and to agree to EPA imposing sanctions on the region if CARB does not adopt all its control measures by January 1, 2014. Staff concluded that this proposal was unacceptable and so notified the Petitioners. Petitioners' Opening Brief was filed on July 13, 2012; EPA's Respondent's brief was filed on October 26, 2012; and our Joint Intervenor's brief was filed on November 16, 2012. Petitioners' Reply Brief was filed on February 4, 2013. We are awaiting the scheduling of oral argument.

14. CASE: **Communities for a Better Environment, California Communities Against Toxics, v. U.S. EPA, Ninth Circuit Court of Appeals Case No. 12-72358**

NATURE OF CASE: On July 24, 2012, Communities for a Better Environment and California Communities Against Toxics filed a Petition for Review of EPA's final rulemaking approving a revision to the District's portion of the California State Implementation Plan that incorporates Rule 1315 – Federal New Source Review Tracking System. The approved SIP revision establishes the procedures for demonstrating equivalency with federal offset requirements by specifying how the District will track debits and credits in its Offset Accounts for Federal NSR Equivalency for specific federal nonattainment pollutants and their precursors.

STATUS: **(No change from last month.)** The Board authorized staff to file a motion to intervene on behalf of EPA. Our motion to intervene was filed on August 17, 2012 and on August 21, 2012 the court issued an order granting the District's motion. The opening brief was filed by Petitioners on November 15, 2012. EPA's answering brief was filed by February 20, 2013 and the District's intervenor brief was filed on April 3. Petitioners' optional reply brief was filed on June 7, 2013. We are awaiting the scheduling of oral argument.

15. CASE: **California Building Industry Ass'n v. Bay Area Air Quality Management District, California Court of Appeal, First Appellate District, Case Nos. A135335 & A136212**

NATURE OF CASE: The Board authorized staff to file an amicus brief in support of Appellant Bay Area AQMD. In 2010, the Bay Area AQMD adopted a series of thresholds of significance ("Thresholds") for greenhouse gases ("GHGs") and toxic air contaminants ("TACs"). In response to the Bay Area's adoption of the Thresholds, the California Building Industry Association ("BIA") filed suit, asserting, among other things, that: (1) adopting the Thresholds was a "project" under CEQA and the Bay Area was thus required to analyze the environmental impacts of adopting the Thresholds; and (2) that the TAC Receptor Thresholds unlawfully required an analysis of the effect of the existing toxic air pollution on the proposed project. The trial court held that the Bay Area's adoption of the Thresholds was a "project" under CEQA, but the court declined to reach the issue of whether the TAC Receptor Thresholds were contrary to CEQA. The Bay Area has appealed the trial court's ruling that adopting the Thresholds is a "project" under CEQA, and BIA has requested that the court of appeal resolve its claim that the TAC Receptor Thresholds violated CEQA.

STATUS:

(No change from last month.) The California Court of Appeal issued a decision on August 13, 2013. The court held that the promulgation of thresholds of significance by a public agency is itself not a “project” subject to CEQA review. It also held that the TAC Receptor Thresholds are not facially invalid because they can be used during CEQA review of a proposed project in ways other than analyzing the effect of the pre-existing pollution on the proposed project, such as determining whether the proposed project itself would increase the TACs to a cumulatively considerable level, determining the health risks to students when a school project is located within a specified radius of a source of TACs, or determining whether the project is consistent with the area’s general or specific plan. The court declined to decide whether the TAC Receptor Thresholds unlawfully required an analysis of the pre-existing pollution on the proposed project, stating that that discussion is better reserved for a case in which the Thresholds have actually been applied to a proposed project. The CBIA has filed a petition for review. On November 26, 2103, the California Supreme Court granted review of the question of what circumstances under CEQA, if any, requires an analysis of how existing environmental conditions will impact future residents or receptors of a proposed project. We intend to file an amicus brief in support of BAAQMD in the Supreme Court. The amicus brief needs to be filed by April 16, 2014.

16. CASE:

Friedman Marketing v. SCAQMD, California Court of Appeal, Second Appellate District, Case No. B249836

NATURE OF CASE:

Appellant appeals the lower court’s adverse decision granting the SCAQMD’s demurrer without leave to amend. Appellant had filed a First Amended Complaint seeking declaratory relief that the SCAQMD could not enforce its Rule 461 against appellant’s customers for installing uncertified vapor recovery equipment on the ground that CARB’s regulations exempted the equipment from certification. Despite suing CARB, and getting an adverse decision from the court, Petitioner nevertheless sued the District for allegedly improperly enforcing CARB’s certification requirement. The court granted the District’s demurrer mainly on the ground that Appellant had failed to exhaust its administrative remedies by not completing its application for certification to CARB.

STATUS:

Appellant’s Opening Brief was filed January 23, 2014. Our brief was filed February 19. *Appellant has not filed a reply brief. In the meantime, the court has closed briefing in this matter.*

17. CASE: **SCAQMD v. Harvey Eder, California Court of Appeal, Second Appellate District, Case No. B251627**

BACKGROUND: SCAQMD appeals from the trial court's judgment granting SCAQMD's dismissal for failure to timely file an amended complaint but without prejudice. Mr. Eder had filed a cross-appeal of the judgment granting dismissal. On June 12, 2013, the court sustained the SCAQMD's demurrer with 30 days leave to amend to Mr. Eder's complaint that the SCAQMD was required to include in its AQMP a requirement to immediately convert the Basin to solar energy. Mr. Eder did not file an amended complaint, and on September 13, 2013, the District moved to dismiss the complaint with prejudice. The court granted the dismissal but without prejudice, effectively allowing Mr. Eder to re-file his complaint.

STATUS: The clerk's transcript was completed on January 23, 2014. Our opening brief was filed February 28, 2014. *The court granted Mr. Eder's request for extension to file his brief. It is now due June 1, 2014.*

SCAQMD'S EMISSION REDUCTION CREDITS APPLICATION REVIEW AND VERIFICATION PROCESS

HRAG NSR Subcommittee Meeting
March 27, 2014

Mohsen Nazemi, P.E.
Deputy Executive Officer

Emission Reduction Credits (ERCs)

The following rules are used for ERCs

- **Rule 1303(b)(2)** requires that unless exempted under Rule 1304 or subject to allocations under Rule 1309.1, emission increases from new or modified sources be offset with ERCs
- **Rule 1309** covers application, eligibility, registration, use and transfer of ERCs
- **Rule 1306(e)** describes the calculation methodology for determination of amount of ERCs

ERC Application Process

In order to apply for ERCs, Rule 1309 requires:

- For each existing source that is to be modified or permanently taken out of service, an ERC application must be submitted no more than 180 days after the emission reduction occurs
- Emission reduction occurs on the last day that equipment is operated

ERC Application Process

To deem an ERC application complete, the application must at minimum include:

- ▣ Date on which the emission reduction took place or is planned to take place
- ▣ Reason for the emission reduction
- ▣ Amount and type of emissions for the two-year period preceding application filing date
- ▣ Number of days the equipment operated in each year of the two-year period preceding application filing date
- ▣ Regulation XIII zone from which the ERC is to originate
- ▣ Surrender of applicable District operating permits

ERC Application Process

Rule 1309 requires that SCAQMD shall...

- ▣ **Consider** emission reductions **only if** the same emission reductions from the same equipment are not required by a stipulated reduction before a complete application is submitted.
- ▣ **Notify** applicant within 30 days of receipt whether the application can be deemed complete
- ▣ **Cancel** an application which continues to be deemed incomplete 180 days after submittal
- ▣ **Give** a preliminary written decision within 180 days of deemed complete date

ERC Eligibility Criteria

Rule 1309 requires the Applicant to
demonstrate emission reductions are...

- ▣ Real
- ▣ Quantifiable
- ▣ Permanent
- ▣ Federally Enforceable
- ▣ BACT adjusted

ERC Calculations

Rule 1306(e)-Emission decreases are...

- ▣ Calculated from the sum of actual emissions
- ▣ Based on the lesser of company records and Annual Emissions Reports
- ▣ Reduced to BACT
- ▣ Based on the two-year period immediately preceding the date of application
- ▣ Divided by the total number of actual operating days in each year
- ▣ Multiplied by a usage factor (1.0, 0.5, or 0.0)

ERC Calculations

Rule 1306 requires that ERCs to equal the emission decrease less...

- ▣ All allocations from the Community Bank,
- ▣ All allocations received from Rule 1309.1 Priority Reserve, and
- ▣ All offsets obtained pursuant to the exemption provisions of Rule 1304

Elements Impacting Timelines for Processing of ERC Applications

Applicants often...

- ❑ Submit only summaries of emission reductions
- ❑ Submit emissions data for the incorrect two-years period (i.e. not the two years prior to application submittal)
- ❑ Request to amend their AERs
- ❑ Submit records in a format that makes it difficult to review (i.e. hundreds of individual PDF files)

Elements Impacting Timelines for Processing of ERC Applications

- ❑ Current BACT determination AND rule-required emission reductions (require analysis of SCAQMD, CARB, and EPA rules and regulations, NESHAPS, NSPS and clearing houses)
- ❑ In certain cases source testing may be conducted to determine actual emissions or emission factors
- ❑ Determining the NSR payback (in some cases records are old and facility histories are complex)
- ❑ In certain cases additional internal review and consultation with Legal Department is required
- ❑ Public Notice and EPA/ARB/Public review/comments

Elements Impacting Timelines for Processing of ERC Applications

SCAQMD often works with applicants despite rule requirements that applications be cancelled for applicant's failure to:

- ▣ Provide timely additional information
- ▣ Supply accurate and clear two-year records
- ▣ Supply accurate AERs for the correct period of interest
- ▣ Inactivate permit to operate

Suggestions on How the Process Can Be Streamlined

Submit complete ERC application which includes:

- AERs to cover the correct two-year period prior to application submittal with raw data, and that the raw data is submitted:
 - in unprotected Excel format, and actual records with ability to cross reference between them
- Complete emissions calculations:
 - accurate, pertinent and documented emission factors
 - SCAQMD- approved source test report(s) from recent source test(s), if any

Suggestions on How the Process Can Be Streamlined

Submit complete ERC applications which includes:

- Current BACT determination and rule-specific emission reduction analysis
- ALL pertinent flow diagrams and ALL emission points
- Identification of air pollution controls that are in place

Suggestions on How the Process Can Be Streamlined

- ▣ Hold regular meetings/conference calls between applicant and SCAQMD to update on progress
- ▣ Timely public notice completion
- ▣ Revise ERC application form package to better specify information needed
- ▣ Pre-determine NSR payback using an ERC or another form of application